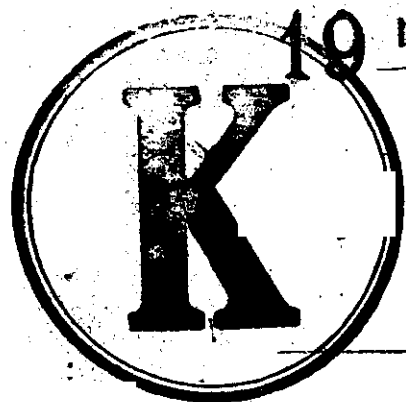




1952.

File No. O.W. Kh. Mehvasi
Estates/52

Legal Department

A - BRANCH p10(6)

Subject:—Opinions under the
West Khandesh Mehvasi Estates
Regulations 1949

File No. O. West Kh. Mehvasi
Estates/52

526-A

C O N T E N T S.

LEGAL DEPARTMENT, File No.O.W.Kh.Mehwasi Estate/52.

Sr.No.	R.I./O.No.	Subject.	Pages.
		Opinions under the West Khandesh Mehawasi Estate Regulations 1949.	
1.	8911/28.5.52	Whether the village sites in Govt. and Collector can dispose them. Whether the Mehawasi Chief-tains who were enjoying exemption from payment of Land Revenue would be entitled to the continuance of the same	1-3
2.	14039/28.8.52	Whether the pensions sanctioned by the Mehawasi Chieftains are recurring to liability	5
3.	16305/A-4.10.52	West Khandesh Mehawasi Estate Regulation.	7-9
4.	16517/A-8.10.52	West Khandesh Mehawasi Estates Resultation 1949 Survey and settlement introduced prior 1939 protected tenants of the Estates	11-15

Mehawasi Estate will vest in

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Legal Department.

It is not clear on what specific legal points R.L.A.'s opinion is required by R.D. Only two points discussed in R.D. note appear to involve legal questions. They are :

(1) Whether the village sites in Mewasi Estates will vest in Government and the Collector can dispose them of; and

(2) Whether the Mewasi Chieftains who were enjoying exemption from payment of Land Revenue would be entitled to the continuance of the same.

2. The first point is considered by the R.L.A. in his opinion No.10796 dated the 9th July 1951. The R.L.A. has held therein that there is no provision in the Regulation of 1949 on the lines of section 6 of the Bombay Taluqdari Tenure Abolition Act, 1949, vesting Public Places, village sites etc. in the State Government. The Ownership of village sites would therefore continue to vest in the Chieftains and ^{1/-} they would be competent to them to deal with the sites subject to the rights of an individual or of the public. In view of this opinion the doubts raised by the Collector do not survive and the view taken in the R.D. note is correct.

3. As regards (2): In his opinion No.32-L dated the 29th September 1950, Additional Secretary has held that all Mewasi land will be liable to assessment in accordance with the provisions of the Bombay Land Revenue Code. A similar view has been taken in R.L.A.'s opinion No.10796 dated the 9th July 1951. Under section 45 of the Land Revenue Code, all land, whether applied to agricultural or other ^e purposes, and wherever situate, is liable to the payment of land revenue to the Government according to the rules except such as may be wholly exempted under the provisions of any special contract with the Government or any law for the time being in force. It appears from the Collector's note at.....

at p. 19 ante that the exemption is not evidenced by any documentary evidence and hence the Chieftains will not be legally able to claim the continuance of the exemption.

4. It is not clear from the R.D. Notes what particular legal point R.D. wants R.L.A. to examine in the matter of devisiham allowances and abolition of "Poltai Tax". As regards abolition of the tax attention of R.D. is invited to para 3 of R.L.A's opinion No.324- Confl. dated the 4th April 1952 (extract appended) from which it would be seen that there would be objection to abolish the same.

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to R.D.No.8911, dated the 28th May 1952.

EKN.20/6/

Legal Department.

The R.L.A. has already made it clear in para 2 of his opinion No.15744, dated the 4th October 1951 that the Government of Bombay is not liable to continue to pay the pensions to the revenue servants of the Mewassai Chieftains. In fact the Collector has not raised the question whether the pensions should now be paid by the State Government but whether the Chieftains are liable to pay the same after 11th December 1950 on which date they stopped collecting the land revenue. The view expressed by Revenue Department that this Government is liable to continue to pay the pensions after 11th December 1950 till the death of the pensioners is not correct. Whether the pensions are a recurring liability on the Mewassai Chieftains till the death of the pensioners is a matter for them to decide and Government has nothing to do with it.

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to R.D. No. 14039, dated the 28th August 1952.

EKN.20/6/

The West Khandesh Mahwassi Estates Regulation, 1949, was enacted for the purpose of removing the doubts regarding the laws in force and for application of certain laws to the territory of the said Mahwassi Estates which was a partially excluded area under the Govt. of India Act, 1935. Section 92 sub-section (1) and (2) of this Act, whereunder the Regulation has been made, empowered the Governor to make laws for the peace and good Government of the said territory and the legislative competence of the Governor to make the Regulations is clear beyond doubt. The claims of the Mahwassi Chieftains to any rights of a ruling Chief have long since been negatived and the estates have all along been treated as parts of British India and now the Republic of India. The application of the Bombay Land Revenue Code to the said territory under section 3 of the Regulation subject to the modifications specified in Schedule II cannot be challenged on any count. The amendment effected in section 136 of the Land Revenue Code, makes it quite clear that all Mahwassi land is liable to assessment in accordance with the provisions of the Code and Rules made thereunder. The Collection of Land Revenue will be made according to the provisions of the Code. Section 15 thereof provides, that all land whether applied to agricultural or other purposes and wherever situate is liable to the payment of land revenue to the Govt. according to the rules except such as may be wholly exempt under the provisions of any special contract with Govt. or any law for the time being in force. If therefore a Chieftain is a superior holder of any land he is liable to pay assessment therefore unless exempt as aforesaid and he cannot either claim share

in the collection of the revenue or the continuance of any exemption from payment of land revenue except in accordance with the Code and the Rules made thereunder. (Cf. para. 2 of R.L.A's opinions No.10796, dated the 9th July 1951, and para. 3 of R.L.A's opinion No.8911, dated the 28th May 1952).

D.S. (Civil) Reply may be:--

R.L.A. Sd/ P.M. Lad.

KKK.20/6/

Office of the R.L.A

West Khandesh
Dohwassi Estate
Regulation.

Seen and returned.

The view taken by the Collector that the West
Khandesh Dohwassi Estates, Regulation, 1940 is unchall-
engable is correct.

Sd/- P. M. Lad.

Remembrancer of Legal Affairs.

U.N. to E.D. No.16305/A dated the 4th October 1952.

EXN.20/6/

Legal Department.

West Khandesh
Mehawassi Estates
Regulation, 1949.

Survey & Settlement
introduced
prior to 1939.

Protected tenants
of the Estates.

The first question raised for consideration is whether the survey and settlement introduced in some of the villages of the Mehawassi Estates can, on the application of the Bombay Land Revenue Code, 1879, by the West Khandesh Mehawassi Estates Regulation, 1949, be deemed to have been made and introduced under Chapter VIIIA of the Code. It is ~~proposed~~ reported by the Collector of West Khandesh that the survey of the villages was carried out by the Chieftains with the help of the officers of the Bombay Government and that the records prepared by them are on the lines of those prepared by the Land Records Department. The Bombay Land Revenue Code was first applied to the Estates by section 3 of the West Khandesh Mehawassi Estates Regulation, 1949. Sub-section (2) of section 1 of the Code provided inter alia that the Code extended to the whole of the Presidency of Bombay, except the City of Bombay, and the Scheduled district of the Mehawassi Chiefs' Villages as defined in the Scheduled Districts Act, 1874. The concluding words have since been deleted from the said sub-section by the Regulation of 1949. The survey reported to have been carried out in some of the villages of the Mehawassi Estates though on the lines of the survey carried out under the provisions of the Code in the other parts of the State proper, cannot be said to have been made under any statutory provision of law. It was an informal survey carried out under executive instructions. The answer to the question raised is therefore in the negative. The view expressed in para 3 of the R.D. Note (page 21 ante) in this behalf does not appear to be correct.

2. The second question for consideration is as to the legal status of the tenants of the Mehawassi Estates. The Bombay Tenancy Act, 1939, was applied to the villages of Mehawassi Estates in 1941, (see Government Notification

Legal Department.

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No. 1118/24A, dated 31st March 1941). By the application of that Act to these villas & the tenants of those Estates become entitled to all rights under that Act. The Bombay Tenancy and Agricultural Lands Act, 1948, was extended to the whole of the Bombay Tenancy Act of 1939, the provisions of the Bombay Tenancy and Agricultural Lands Act came into operation in the villages of the Mohawassi Estates and the rights acquired under the repealed Act were continued under the new Act. Consequently, the tenants who had acquired the rights of protected tenants under the Bombay Tenancy Act of 1939 continued to enjoy the protected tenancy rights under the new Act of 1948. The Collector appears to doubt the position because the landlord had no opportunity to protest under section 3A of the Bombay Tenancy Act of 1939. There is no substance in this contention. It was open to the landlord to protest if the tenants were not entitled to the rights of a protected tenant under the Act and if he failed to do so, he is to blame and none else. It is suggested that the landlord in the case of the Mohawassi Estates was the Chieftain himself and there was no relation of a superior holder and inferior holder between the parties, and no rent was recovered by the Chieftains from the inferior holders as they used to recover the assessment in the capacity of a proprietor. Whether the Chieftain was a proprietor. Whether the Chieftain was a proprietor of the soil and whether he had any rights higher than a superior holder would be immaterial so long as the tillers of the soil were holding the lands from him for payment of some consideration. 'Landlord' was not defined in the Bombay Tenancy Act, 1939, and consequently, the definition of that term as given in the Bombay Land Revenue Code would be applicable.

L Bombay State, Case -
quently, on the repeal
of the

'Landlord' as defined in section 3, clause (5) of the Bombay Land Revenue Code means a lessor. A lease of immovable property, as defined in section 105 of the Transfer of property Act is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a sum price paid or promised, or of money, a share of crops, service or any other thing of value to be rendered, periodically or on specified occasions to the transferor by the transferee, who accepts the transfer of such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent. If this kind of relationship existed between the Mohawassi Chieftain and the tillers of the soil, those tillers would certainly be entitled to the rights of the protected tenant under the Bombay Tenancy Act, 1939, which rights have been continued under the Bombay Tenancy and Agricultural Lands Act, 1948, and the amount paid by the tillers, be it in the shape of assessment, would be deemed to be the rent.

3. It was not necessary to amend the Bombay Tenancy and Agricultural Lands Act, 1948, in its application to the Mohawassi Estates as in the case of its application to the merged areas, for, in the case of the latter the Act was applied to the merged areas for the first time; while in the case of the Mohawassi Estates the old Bombay Tenancy Act as well as the new Act of 1948 were already applied.

Sd/ J.B.D.

Additional Secretary to Government.

U.R. to R.D.No.16517/A dated the 8th October 1952.

EXN.20/6/